

## Message Text

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INFO OCT-01 CCO-00 SS-15 SSO-00 ISO-00 PA-01 NSC-05 NSCE-00

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DRAFTED BY L/MBFELDMAN:RR:CC; PA:CWB:SAC

APPROVED BY THE DEPUTY SECRETARY

S:LSEAGLEBURGER

L:MLEIGH

S/S:GSPRINGSTEEN, JR.

PA:MS. LAISE

S/S:JMEALUM

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FM SECSTATE WASHDC

TO AMEMBASSY LONDON IMMEDIATE

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TOSEC 418

E.O. 11652: N/A

TAGS: OVIP (KISSINGER)

SUBJECT: FOI

FROM DEPUTY SECRETARY

1. SINCE THE AMENDMENTS TO THE FREEDOM OF INFORMATION ACT, WHICH WERE AS YOU KNOW ENACTED OVER THE PRESIDENT'S VETO, BECOME EFFECTIVE FEBRUARY 19 YOU MAY WISH TO KNOW WHERE WE STAND ON IMPLEMENTATION.

2. IN SUMMARY, THE LAW:

(A) REQUIRES RESPONSE TO REQUESTS FOR OFFICIAL RECORDS WITHIN 10 WORKING DAYS; ACTION ON APPEALS OF DENIALS WITHIN 20 WORKING DAYS; THERE IS A MAXIMUM EXTENSION OF ADDITIONAL 10 WORKING DAYS IN SPECIAL CIRCUMSTANCES.

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(B) BRINGS THE EXECUTIVE OFFICES OF THE PRESIDENT (E.G.,

NATIONAL SECURITY COUNCIL, CIEP, ETC.) UNDER ITS PROVISIONS.

(C) MANDATES GREATER AVAILABILITY OF INVESTIGATIVE FILES  
(E.G., SECURITY, PERSONNEL, ETC.).

(D) AUTHORIZES JUDICIAL REVIEW OF EXECUTIVE BRANCH  
CLASSIFICATION DECISIONS WHEN RECORDS HAVE BEEN DENIED  
TO REQUESTER.

(E) PROVIDES FOR COURT-INITIATED PUNITIVE ACTION WHEN  
AN EMPLOYEE'S CONDUCT IN DENYING DOCUMENTS IS FOUND TO  
BE "ARBITRARY AND CAPRICIOUS."

3. EAGLEBURGER, AS ACTING DEPUTY UNDER SECRETARY FOR  
MANAGEMENT, HAS APPROVED NEW REGULATIONS FOR IMPLEMENTA-  
TION OF THE LAW. SALIENT POINTS OF INTEREST TO YOU ARE:

(A) RESPONSIBILITY OF REVIEWING REQUESTED DOCUMENTS  
IS LODGED WITH ASSISTANT SECRETARIES IN SUBSTANTIVE  
BUREAUS, WHO HAVE DESIGNATED OFFICERS AT DEPUTY ASSISTANT  
SECRETARY LEVEL TO BE RESPONSIBLE TO THEM FOR RECOMMENDING  
ACTION INCLUDING REFERRAL TO APPROPRIATE SEVENTH FLOOR  
PRINCIPAL WHEN WARRANTED BY POSSIBLE EFFECT OF RELEASE ON  
CURRENT POLICIES OR NEGOTIATIONS; (B) WHERE DOCUMENTS ARE  
DENIED, REQUESTER CAN APPEAL TO COUNCIL ON CLASSIFICATION  
POLICY WHICH CHAIRED BY ASSISTANT SECRETARY PA AND IN-  
CLUDES S/P, L, S/S, INR, H AND A/SY; FINALLY (C) DE-  
PARTMENT MUST REFER REQUESTS FOR CLASSIFIED INFORMATION  
AND DOCUMENTS ORIGINATED BY OTHER AGENCIES (E.G., NSC,  
CIA, ETC.) TO THOSE AGENCIES.

4. WHILE COURTS ARE AUTHORIZED TO REVIEW CLASSIFIED  
DOCUMENTS IN CAMERA, THEY MAY CHOOSE TO RELY ON AFFI-  
DAVITS AND OTHER EVIDENCE FROM GOVERNMENT OFFICIALS IN  
LIEU OF EXAMINING THE DOCUMENTS THEMSELVES. THE LAW  
AUTHORIZES COURTS TO MAKE DE NOVO DETERMINATIONS ON CLASSI-  
FICATIONS AND WE CAN ONLY HOPE THAT COURTS WILL ACCORD  
SOME WEIGHT TO EXECUTIVE JUDGMENTS. THE FAVORABLE DE-  
CISION OF THE FEDERAL COURT OF APPEALS (RICHMOND) IN  
THE MARKS AND MARCHETTI CASE LAST WEEK TENDS TO SUPPORT  
OUR HOPE.

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5. WE ARE WORKING WITH JUSTICE AND THE OTHER AGENCIES  
IN THE INTERAGENCY CLASSIFICATION REVIEW COMMITTEE TO  
ESTABLISH PROCEDURES FOR CONSIDERING CLASSIFICATION QUES-  
TIONS AND FOR ADVISING JUSTICE WITH A VIEW TO MAXIMIZING  
EXECUTIVE BRANCH EFFECTIVENESS IN THE LITIGATION WHICH  
ALMOST CERTAINLY LIES AHEAD. WE HAVE VERY MUCH IN  
MIND THE NEED TO PRESERVE THE RESPONSIBILITY OF THE

EXECUTIVE BRANCH FOR CLASSIFICATION DECISIONS, WHICH IS  
AN INTEGRAL ASPECT OF THE MANAGEMENT OF FOREIGN POLICY,  
AND BELIEVE THAT OUR ABILITY TO DO SO WILL BE ENHANCED  
BY DEMONSTRATED GOOD FAITH COMPLIANCE WITH THE LAW.

6. THERE ARE ALREADY PENDING A NUMBER OF FOI REQUESTS  
OF INTEREST TO YOU. THEY INCLUDE MORT HALPERIN'S REQUEST  
FOR THE UNPUBLISHED VOLUMES OF "THE PENTAGON PAPERS"  
AND THE RECENT REQUEST FOR YOUR BACKGROUND PRESS BRIEFING

ON SALT GIVEN IN MOSCOW 1972. WE WILL BE CAREFUL TO  
ASSURE THAT SUCH REQUESTS ARE BROUGHT TO YOUR PERSONAL  
ATTENTION. INGERSOLL

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## Message Attributes

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